

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

United States District Court
Southern District of Texas
FILED

JAN 24 2003

Michael N. Milby, Clerk

RUBEN A. PEREZ; DANIEL A. PEREZ; DAVID §
A. PEREZ; TVALUE VENTURES; a Texas §
Limited Partnership; NATALIE HOLDINGS, §
a Texas Limited Partnership; D&D HOLDINGS, §
a Texas Limited Partnership; and DANMAR §
HOLDINGS, a Texas Limited Partnership, §

Plaintiffs, §

v. §

KPMG LLP; DANIEL SLATTERY; §
GARY POWELL; JOHN LARSON; QUADRA §
ADVISORS L.L.C.; and QUADRA FINANCIAL §
GROUP L.P., §

Defendants. §

M-03-026

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441, 1446 and 1367, defendants KPMG LLP, Daniel Slattery, Gary Powell, Quadra Advisors L.L.C. and Quadra Financial Group L.P. (collectively "Defendants") provide Notice of Removal of this civil action to the United States District Court for the Southern District of Texas (McAllen Division), and respectfully represent that removal is proper and the jurisdictional requirements are fully met for the reasons set forth below. Defendants fully reserve any and all defenses, objections and exceptions, including but not limited to, objections to service, jurisdiction, venue and statute of limitations.

NATURE OF THE STATE COURT ACTION

Defendants have been sued in a civil action entitled *Rubin A. Perez; Daniel A. Perez; David A. Perez; TValue Ventures, a Texas Limited Partnership; Natalie Holdings, a Texas Limited Partnership; D&D Holdings, a Texas Limited Partnership; and Danmar Holdings, a Texas Limited Partnership v. KPMG LLP; Daniel Slattery; Gary Powell; John Larson; Quadra Advisors L.L.C.; and Quadra Financial Group L.P.*, in the District Court of Hidalgo County, Texas.

Plaintiffs have alleged in their Original Petition that Defendants provided faulty investment, accounting and tax services in connection with an investment and tax strategy in which Plaintiffs participated. Plaintiffs have alleged that Defendants' course of conduct violated the Texas Deceptive Trade Practices Act (Count I); that defendants KPMG and Quadra breached their contracts with Plaintiffs by failing to provide services in good faith and by failing to pay penalties and interest Plaintiffs purportedly owed to the Internal Revenue Service (Count II); that the defendants KPMG, Powell, Larson and Slattery were negligent in providing investment, accounting and tax advice in connection with the investment strategy (Count III); that Defendants made false representations to Plaintiffs in connection with the investment and tax strategy (Count IV); and that Defendants negligently misrepresented facts and omitted material representations to Plaintiffs in connection with providing investment, accounting and tax services to Plaintiffs (Count V).

FEDERAL QUESTION JURISDICTION

This Court has original jurisdiction over the Petition filed in state court, pursuant to 28 U.S.C. § 1331, because a federal right is an essential element of the state law claims asserted by the Plaintiffs, interpretation of the federal question is necessary to any resolution of the claims,

and the question of federal law is substantial. Despite Plaintiffs' assertion in their Petition that they make no claims under federal law, a substantial question of federal law is an essential element of Plaintiffs' claims. To prevail on their claims, Plaintiffs must prove that, under federal law, the transactions at issue did not give them rights to claim an offsetting loss deduction on their 1997 federal income tax returns. Plaintiffs are currently litigating this issue with the Internal Revenue Service in several separate federal actions (including two in this court). *See, e.g., Danmar Holdings, Ltd. v. U.S.*, Civil Action No. M-01-293 (S.D. Tex.); *D&D Holdings Ltd. v. United States*, Civil Action No. M-01-CV-293 (S.D. Tex.); *Natalie Holdings, LLC v. United States*, Civil Action No. SA01CA1096 (W.D. Tex.). Plaintiffs also allege in Count II of their state Petition that defendant KPMG breached its contracts with Plaintiffs by failing to register with the Internal Revenue Service the strategy in which they participated. Whether a strategy should be registered with the Internal Revenue Service is a matter of federal tax law. *See* 26 U.S.C. § 6111.

Plaintiffs have alleged in their respective federal actions that the IRS improperly disallowed their claimed capital losses on grounds that they did not meet the requirements of the Internal Revenue Code, including but not limited to 26 U.S.C. §§ 165, 269, 301, 302, 318, 465, 1011 and 1012. Plaintiffs also have asserted that they are not liable for interest and penalties based on their claimed capital losses. Compare Petition at paras. 19-20.

Plaintiffs' respective rights under federal law to claim the capital losses resulting from their participation in the strategy on which Defendants provided investment, accounting or tax advice necessarily underlies the allegations in the Petition. To resolve the claims raised in the Petition filed in the District Court of Hidalgo County, it is necessary to resolve the federal question of whether the transaction at issue gave rise to a legitimate offsetting capital loss

deduction under federal tax law. *See Howrey v. Allstate Insurance Co.*, 243 F.3d 912 (5th Cir. 2001) (recognizing that federal jurisdiction can exist over state law claims when a federal right is an essential element, resolution of the federal issue is necessary to resolve the case, and the federal question is substantial).

SUPPLEMENTAL JURISDICTION

To the extent Plaintiffs' claims do not require resolution of the federal tax issue, Defendants respectfully request that the Court exercise supplemental jurisdiction over such claims, pursuant to 28 U.S.C. §1367(a).¹

REMOVAL TO THIS DISTRICT IS PROPER

This Notice of Removal is being filed within 30 days of the earliest service upon one of the named Defendants, and is thus timely filed under 28 U.S.C. § 1446(b). All of the Defendants who have been served to date join in the Notice of Removal. Upon information and belief, John Larson has not been served to date.

¹ Defendants submit that the posture of this case is different from one in which the plaintiff alleges jurisdiction based solely on an alleged violation of the federal RICO statute; fails to assert that the Court has federal question original jurisdiction under Title 26 for the state law claims; but rather, asks the Court merely to take supplemental jurisdiction over those claims. For instance, in *Jacoboni v. KPMG LLP*, Case No. 6:02-cv-510-Orl-22DAB (M.D. Fla.), the plaintiff alleged federal question jurisdiction based solely on his federal RICO claim, and he has asked the court to take supplemental jurisdiction over his state law claims against KPMG. Responding to plaintiff's jurisdictional allegation, KPMG argued that if the court dismissed the RICO claim, the state claims should be dismissed as well. Here this Court would have original jurisdiction over the claims as plead in Plaintiffs' Petition because a federal right is an essential element of the Perez's state law claims; interpretation of the Perez's asserted right to federal tax benefits is necessary to resolve the case; and, the question of federal law is substantial..

ADDITIONAL PROCEDURAL MATTERS

Defendants will promptly serve written notice of the filing of this Notice of Removal with the Clerk of the Court of Hidalgo County in the State of Texas.

Pursuant to Local Rule 81, the following documents are attached to this Notice of Removal:

- a. Index of Matters Being Filed (Exhibit A)
- b. All Executed Process in the Case (Exhibit B)
- c. Plaintiffs' Original Petition (Exhibit C)
- d. Rule 11 Stipulations as to Response Deadlines (Exhibit D)
- e. A Copy of the Docket Sheet in the State Court Action (Exhibit E)
- f. A List of All Counsel of Record, Including Addresses, Telephone Numbers, and Parties Represented (Exhibit F)

No orders have been signed by the state court judge, no answers have been filed, and no other pleadings asserting any cause of action have been filed in the state court.

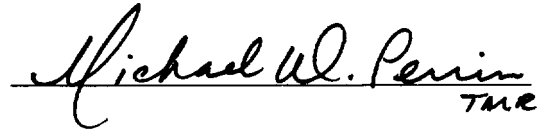
WHEREFORE, Defendants pray that the above-entitled cause on the docket of the District Court of Hidalgo County in the State of Texas be removed from that court to the United States District Court for the Southern District of Texas.

Respectfully submitted,

KING & SPALDING LLP

Of Counsel:

Steven L. Gremminger
Associate General Counsel
KPMG LLP
2001 M Street, N.W.
Washington, D.C. 20036
Telephone: (202) 533-3124
Facsimile: (212) 909-5685

A handwritten signature in black ink, reading "Michael W. Perrin". The signature is written in a cursive style. Below the signature, the word "True" is written in a smaller, handwritten font.

Michael W. Perrin (Attorney in Charge)
State Bar No. 15795700
Southern District I.D. No. 1473
Tracey M. Robertson
State Bar No. 00792805
Southern District I.D. No. 26094
1100 Louisiana, Suite 4000
Houston, Texas 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290

John M. Bray
Patricia L. Maher
1730 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Facsimile: (202) 626-3737

ROERIG, OLIVEIRA & FISHER L.L.P.

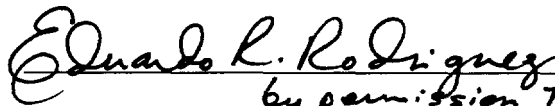
David G. Oliveira
State Bar No. 15254675
Southern District ID. No. 13862
506 East Dove Street
McAllen, Texas 78502
Telephone: (956) 631-8049
Facsimile: (956) 631-8141

Attorneys for Defendants KPMG LLP,
DANIEL SLATTERY, and GARY
POWELL

O'NEILL, LYSAGHT & SUN

Brian A. Sun
Yolanda Orozco
100 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401
Telephone: (310) 451-5700
Facsimile: (310) 399-7201

RODRIGUEZ, COLVIN & CHANEY LLP


by permission TMR

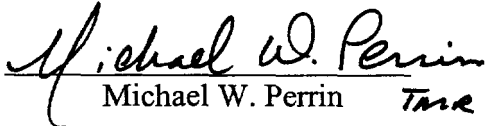
Eduardo R. Rodriguez (Attorney in Charge)
State Bar No. 17144000
Southern District ID. No. 1944
Teri L. Danish
State Bar No. 05375320
Southern District ID. No. 12862
1201 East Van Buren
P.O. Box 2155
Brownsville, Texas 78522
Telephone: (956) 542-7441
Facsimile: (956) 541-2170

Attorneys for Defendants QUADRA
ADVISORS L.L.C. and QUADRA
FINANCIAL GROUP L.P.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was forwarded to the following counsel of record, by certified mail, return receipt requested on this the ~~24th~~ day of January 2003:

Edmundo O. Ramirez
Ellis, Koenek & Ramirez, L.L.P.
1101 Chicago
McAllen, Texas 78501


Michael W. Perrin *True*

INDEX OF MATTERS BEING FILED

1. Civil Cover Sheet
2. Notice of Removal
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8. A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit F)

C-2593-02-A

DISTRICT COURT, HIDALGO COUNTY, TEXAS 92ND JUDICIAL DISTRICT OF TEXAS

CITATION

ORIGINAL

RUBEN A. PEREZ vs. KPMG LLP, ET. AL.

THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty(20) days after you were served this citation and petition, a default judgment may be taken against you.

To: GARY POWELL
4440 ARAPAHOE AV. STE.280
BOULDER, COLORADO 80303

You are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 92ND Judicial District Court of Hidalgo County, Texas at the Courthouse 100 North Closner, Edinburg, Texas, 78539. Said Petition was filed on the 20TH day of DECEMBER ,2002 and a copy of same accompanies this citation. The file number and style of said suit being No. C-2593-02-A
RUBEN A. PEREZ

vs.

KPMG LLP, ET. AL.
The PLAINTIFFS' ORIGINAL PETITION
was filed in said court by EDMUNDO O. RAMIREZ
1101 CHICAGO MCALLEN, TEXAS 78501-4822

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof. The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and Given under my hand and seal of said Court, at Edinburg, Texas this the 23rd day of December, 2002.

Pauline G. Gonzalez, District Clerk
Hidalgo County, Texas

By: 
STEVE ROQUE

CERTIFICATE OF RETURN
UNDER RULES 103 T.R.C.P.

This is to certify that on the _____ day of _____, 2002 I, STEVE ROQUE, Clerk of the 92ND District Court of Hidalgo County, Texas mailed to the defendant in cause number C-2593-02-A

RUBEN A. PEREZ VS. KPMG LLP, ET. AL.

a copy of the citation along with a copy of the petition, by
certified mail return receipt requested and on the _____ day of
_____, 2002, receipt was returned served on the def.
_____(or unserved for the reason on the
certificate return) _____

Given under my hand and seal of said Court, at office in Edinburg
Texas this the _____ day of _____, 2002

Pauline G. Gonzalez, District Clerk
Hidalgo, County, Tx

By: _____
Clerk

ORIGINAL

C-2593-02-A

DISTRICT COURT, HIDALGO COUNTY, TEXAS 92ND JUDICIAL DISTRICT OF TEXAS

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To: DANIEL SLATTERY
112 E.PECAN, SUITE 2400
SAN ANTONIO, TEXAS 78205-1585

You are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 92ND Judicial District Court of Hidalgo County, Texas at the Courthouse 100 North Clossner, Edinburg, Texas, 78539. Said Petition was filed on the 20TH day of DECEMBER, 2002 and a copy of same accompanies this citation. The file number and style of said suit being No. C-2593-02-A RUBEN A. PEREZ

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C-2593-02-A

DISTRICT COURT, HIDALGO COUNTY, TEXAS 92ND JUDICIAL DISTRICT OF TEXAS

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To: KPMG L.L.P.
C/O EDGAR R. GIESINGER
700 LOUISIANA ST. 27TH FLOOR
HOUSTON, TEXAS 77002

You are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 92ND Judicial District Court of Hidalgo County, Texas at the Courthouse 100 North Closner, Edinburg, Texas, 78539. Said Petition was filed on the 20TH day of DECEMBER ,2002 and a copy of same accompanies this citation. The file number and style of said suit being No. C-2593-02-A
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To: JOHN LARSON
14 GLOVER STREET
SAN FRANCISCO, CALIFORNIA 94109-2105

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ORIGINAL

C-2593-02-A

DISTRICT COURT, HIDALGO COUNTY, TEXAS 92ND JUDICIAL DISTRICT OF TEXAS

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To: QUADRA FINANCIAL GROUP L.P.
MARIE M. BENDER
601 UNION STREET, 56TH FLOOR
SEATTLE, WASHINGTON
C/O SECRETARY OF STATE OF TEXAS

You are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the Honorable 92ND Judicial District Court of Hidalgo County, Texas at the Courthouse 100 North Closner, Edinburg, Texas, 78539. Said Petition was filed on the 20TH day of DECEMBER, 2002 and a copy of same accompanies this citation. The file number and style of said suit being No. C-2593-02-A
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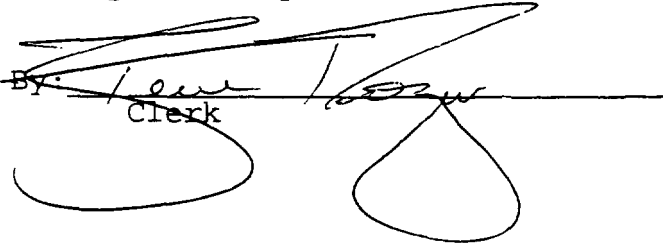
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To: QUADRA ADVISORS L.L.C.

MARIE M. BENDER

601 UNION STREET, 56TH FLOOR

SEATTLE, WASHINGTON

C/O SECRETARY OF STATE OF TEXAS

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Hidalgo, County, Tx

By: _____

Clerk

ORIGINAL



**ELLIS
KOENEKE & RAMIREZ**
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP
1101 CHICAGO
MCALLEN, TEXAS 78501-4822
TELEPHONE
(956) 682-2440
FAX
(956) 682-0820
www.ekrattorneys.com

BILL ELLIS, JR.
BOARD CERTIFIED
ESTATE PLANNING & PROBATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

THOMAS D. KOENEKE
BOARD CERTIFIED
ESTATE PLANNING & PROBATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

EDMUNDO O. RAMIREZ
BOARD CERTIFIED
CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

DENNIS A. LONGORIA, JR.
LAWRENCE C. MORGAN
JOHN P. FRANKE, II
LYNSE STATON LARANCE

OF COUNSEL
RITA BETH WHATLEY
BARBARA SEGOVIA DE ALARCON*
*LICENSED IN MEXICO ONLY

December 20, 2002

Mrs. Pauline Gonzalez
Hidalgo County District Clerk
Hidalgo County Courthouse
100 North Closner
Edinburg, Texas 78539

HAND DELIVERED

Re: Ruben A. Perez, et al v. KPMG LLP, et al; Our File No. 02-188

Dear Mrs. Gonzalez:

Enclosed please find an original and nine copies of Plaintiff's Original Petition and Application and Demand for Jury Trial in connection with the above-referenced matter. Kindly file the enclosed original, and file-stamp the extra copy for return to our office with our carrier.

Four copies are enclosed for service, via certified mail, to each of the following defendants, KPMG LLP, Daniel Slattery, Gary Powell and John Larson.

Four copies are enclosed for service on Quadra Advisors L.L.C. and Quadra Financial Group L.P., via certified mail to the Secretary of State and we are enclosing a check in the amount of \$100.00 made payable to the Secretary of State.

Please find our firm check in the amount of \$443.00, representing payment for the filing fees and citations for the six defendants. A third check in the amount of \$30.00 is also enclosed which represents payment for the jury fee.

Thank you for your usual courtesies and assistance. Should you have any questions, please feel free to contact the undersigned at your earliest convenience.

Sincerely,

ELLIS, KOENEKE & RAMIREZ, L.L.P.

By: 

EDMUNDO O. RAMIREZ

EOR/er
Enclosures

Mrs. Pauline Gonzalez
December 20, 2002
Page 2

xc: Ruben A. Perez
Daniel Perez
David A. Perez
Mark Carrigan
George Gerachis
Raymond L. Thomas

Via First Class Mail
Via First Class Mail
Via First Class Mail
Via First Class Mail
Via First Class Mail
Via First Class Mail

CAUSE NO. C-2593-C2-4

RUBEN A. PEREZ, DANIEL A. PEREZ,
DAVID A. PEREZ, TVALUE VENTURES,
A TEXAS LIMITED PARTNERSHIP,
NATALIE HOLDINGS, A TEXAS
LIMITED PARTNERSHIP, D&D
HOLDINGS, A TEXAS LIMITED
PARTNERSHIP, AND DANMAR
HOLDINGS, A TEXAS LIMITED
PARTNERSHIP

VS.

KPMG LLP, DANIEL SLATTERY,
GARY POWELL, JOHN LARSON,
QUADRA ADVISORS L.L.C.,
QUADRA FINANCIAL GROUP L.P.

§ IN THE DISTRICT COURT

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____ JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

FILED
AT 9:14 O'CLOCK A M

DEC 20 2002

PAULINE G. GONZALEZ, CLERK
District Courts, Hidalgo County
By Mary R. Collins Deputy

PLAINTIFFS' ORIGINAL PETITION

Daniel A. Perez, David A. Perez, Ruben A. Perez, TValue Ventures LP, Natalie Holdings LP, D&D Holdings LP, and DanMar Holdings LP file their Original Petition against KPMG LLP("KPMG"), Daniel Slattery, Gary Powell, John Larson, Quadra Advisors L.L.C. and Quadra Financial Group L.P.:

**I.
PARTIES**

1. Daniel A. Perez is an individual who resides in Hidalgo County, Texas. David A. Perez and Ruben A. Perez are individuals who live in Kendall County, Texas. The three Perez brothers shall collectively be referred to as the Perez brothers.

2. TValue Ventures LP (TValue) is a Texas limited partnership which was created on advise of defendants for Ruben A. Perez to implement the investment and tax strategy which forms the basis of Ruben's complaint against the defendants.
3. Natalie Holdings LP (Natalie) and D&D Holdings LP (D&D) are Texas limited partnerships which were created on advise of defendants for David Perez to implement the investment strategy which forms the basis of David's complaint against the defendants.
4. DanMar Holdings LP (DanMar) and D&D Holdings LP (D&D) are Texas limited partnerships which were created on advise of defendants for Daniel Perez to implement the investment and tax strategy which forms the basis of Daniel's complaint against the Defendants.
5. TValue, Natalie, D&D and DanMar shall collectively be referred to as the "Perez limited partnerships". The Perez brothers and the Perez limited partnerships shall collectively be referred to as Plaintiffs.
6. Defendant KPMG L.L.P. (KPMG) is a limited liability partnership with offices located throughout the United States, including the State of Texas. While KPMG is organized under the laws of Delaware and maintains its principal place of business in New York, it has a registered agent in Texas. Thus, KPMG can be served by serving its registered agent for process, Edgar R. Giesinger, 700 Louisiana St., 27th Floor, Houston, Texas 77002, via certified mail.

7. Defendant, Daniel Slattery is an individual who lives and works in San Antonio, Bexar County, Texas. Daniel Slattery provided tax and financial accounting advice and made tax and financial misrepresentations to Plaintiffs in Texas. Daniel Slattery may be served at his principal place of business; 112 E. Pecan, Suite 2400, San Antonio, Texas 78205-1585, via certified mail.
8. Defendant, Gary Powell is an individual who lives and works in Boulder, Colorado. Gary Powell provided tax and financial accounting advice and made tax and financial misrepresentations to Plaintiffs in Texas. Gary Powell may be served at his principal place of business; 4440 Arapahoe Av. Ste. 280, Boulder, Colorado 80303, via certified mail.
9. Defendant, John Larson is an individual who lives and works in San Francisco, California. John Larson provided tax and financial accounting advice and made tax and financial misrepresentations to Plaintiffs in Texas. John Larson may be served at his principal place of business; 14 Glover Street, San Francisco, California 94109-2105, via certified mail.
10. Quadra Advisors L.L.C. (Quadra Advisors) is a foreign limited liability company that has not registered to do business in the State of Texas. However, Quadra has done business in the State of Texas and may be served by serving the Secretary of State of Texas with forwarding to Marie M. Bender, General Counsel, Quadra Financial Group L.P., 601 Union Street, 56th Floor Seattle, Washington.

11. Quadra Financial Group L.P.(Quadra Financial)is a foreign limited liability company that has not registered to do business in the State of Texas. However, Quadra has done business in the State of Texas and may be served by serving the Secretary of State of Texas with forwarding to Marie M. Bender, General Counsel, Quadra Financial Group L.P., 601 Union Street, 56th Floor Seattle, Washington.
12. Quadra Advisors and Quadra Financial shall be collectively referred to as Quadra. KPMG, Daniel Slattery, Gary Powell, John Larson and Quadra shall collectively be referred to as “Defendants”.

II. VENUE

13. Venue is proper in the District Courts of Hidalgo County, as Daniel Perez resides in Hidalgo County, Texas; most, if not all, of the events relating to the creation of DanMar and D&D to implement the investment and tax strategy occurred in Hidalgo County; and numerous meetings relating to the investment and tax strategy occurred in Hidalgo County. Therefore, the cause of action arose in Hidalgo County, Texas.

III. FACTS

14. The Perez brothers are successful businessmen who, through their hard work and toil, took their business from a small proprietorship in McAllen, Texas, to a large public corporation. In February of 1997, the Perez brothers sold their interest to a Canadian corporation. The sale of the company’s stock resulted in large profits for the three brothers.

15. Prior to selling their stock, the Perez brothers were approached by Quadra and KPMG's "Personal Financial Planning Group", through Gary Powell and John Larson, and were told that KPMG provided legal investments that generated legal tax losses recognized by the Internal Revenue Service to offset capital gains. They assured the Perez brothers that Quadra's and KPMG's tax strategy was legal and would be supported by tax and legal opinions verifying the legality of the strategy.
16. Thereafter, the Perez brothers had several meetings and telephone conversations with Quadra, Daniel Slattery and KPMG's "Personal Financial Planning Group". At the specific instruction of KPMG and Quadra, the Perez limited partnerships were created for the purpose of implementing the investment and tax strategy. Daniel Slattery and the KPMG "Personal Financial Planning Group" represented to the Perez brothers that the KPMG investment strategy would generate legal tax losses to offset against capital gains and promised that the entire investment strategy would pass scrutiny with the Internal Revenue Service. In fact, the Perez brothers were told that KPMG was so confident of this investment strategy, they would guarantee its success and pay any penalties and interest if the Internal Revenue Service disallowed the deductions.
17. When the Perez brothers suggested that they would have an independent set of tax and legal advisors review the investment strategy, KPMG advised that the strategy was "confidential" and could not be disclosed to anyone. In fact, each of the Perez brothers were required to sign a "confidentiality agreement" before moving forward with the investment strategy. KPMG repeatedly assured the Perez brothers that the

investment was completely legal, would not be audited by the IRS and did not need independent approval.

18. Through a series of several transactions involving the purchase and sale of warrants and stock with foreign corporations and partnerships, KPMG created a situation where Plaintiffs allegedly obtained significant capital losses as a result of the transactions. KPMG, Gary Powell and Daniel Slattery certified that the transactions were bona fide and in compliance with all Internal Revenue Service regulations. In fact, Daniel Slattery prepared Plaintiffs' tax returns with full knowledge that the substantial losses would be disallowed by the Internal Revenue Service.
19. KPMG, Daniel Slattery and Gary Powell never advised the Perez brothers of the significant tax risks associated with the investment strategy or the fact that KPMG had never registered the tax investment strategy with the Internal Revenue Service. Thus, the Perez brothers were not aware that the IRS would 1) deny the capital loss, resulting in an increased tax and interest payment 2) impose accuracy related penalties and/or 3) declare the investment strategy to be an "abusive tax shelter" resulting in draconian penalties. KPMG, Daniel Slattery and Gary Powell were fully aware of the risks associated with the investment strategy, but failed to advise the Perez brothers, choosing instead to misrepresent the safety and legality of the proposed investment.
20. After Dan Slattery completed Plaintiffs' income tax returns, the Internal Revenue Service issued Notice 2001-45, advising taxpayers that investment strategies utilizing foreign corporations, identical to the KPMG strategy implemented for Plaintiffs, would

disallow losses claimed in the transaction, causing additional taxes, interest and penalties to be assessed and that such strategy would be classified as an abusive tax shelter. In fact, each of the brothers have had their tax returns audited by the IRS and each of them have incurred tremendous penalties and interest in addition to the tax losses.

21. Plaintiffs were required to pay Defendants a total of \$ 4.5 million to participate in the KPMG investment strategy.
22. While the exact amount of the Plaintiffs' damages is not known as of this date, Plaintiffs have suffered actual damages of the following types;
 - 1) Transaction costs and fees related to the investment strategy;
 - 2) Potential penalties and interest on taxes paid as a result of disallowed capital losses;
 - 3) Tax losses incurred by failing to proceed with other tax strategies that would have safely allowed the Perez brothers to reduce the tax liability that they would be required to pay;
 - 4) Attorneys' fees and accounting fees expended in attempting to minimize the losses as a result of the investment strategy.

**VI.
CLAIMS FOR RELIEF**

A. *First Claim: Defendants' Course of Conduct Violates the Texas Deceptive Trade Practices Act*

23. Plaintiffs are "consumers" as that term is defined in the Texas Deceptive Trade Practices Act (DTPA). Through its employees, agents and servants, Defendants engaged in the following wrongful conduct in violation of the DTPA by:

- a. representing that their investment, accounting and tax services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;
- b. representing that their investment, accounting and tax services are of a particular standard, quality, or grade, if they are of another;
- c. using deceptive representations in connection with their investment, accounting and tax services.
- d. Engaging in unconscionable conduct as that term is defined in the Act.

24. By virtue of Defendants' uniform misrepresentations and unconscionable conduct, Plaintiffs have suffered actual damages as set forth above. Pursuant to the DTPA, Plaintiffs seek reimbursement for their actual damages, as well as reimbursement of attorneys' fees incurred in prosecuting the claim, costs of court and all other damages allowed by the Act. Further, as Defendants' acts were committed knowingly as that term is defined in the Act, Plaintiffs seek treble damages for such knowing violations of the Act.

B. Second Claim: Breach of Contract against KPMG and Quadra

25. Plaintiffs entered into a series of contracts with KPMG and Quadra wherein it agreed to provide investment, accounting and tax services in return for the payment of fees.
26. KPMG breached its contracts with Plaintiffs by failing to register the investment strategy with the Internal Revenue Service, by failing to provide the services in good faith and by failing to pay for the penalties and interest owing to the Internal Revenue Service as promised by Defendants.
27. Plaintiffs were damaged by KPMG's and Quadra's breach of contract and seek recovery for the contractual damages as set forth above. Plaintiffs also seeks reasonable attorneys' fees and costs of court.

C. Third Claim: Accounting Malpractice and Negligence against KPMG, Gary Powell John Larson and Daniel Slattery

28. KPMG, Gary Powell, John Larson and Daniel Slattery owed a duty to Plaintiffs to use the skill, judgment and care of a reasonably competent accountant and tax advisor. Further, KPMG, Gary Powell, John Larson and Daniel Slattery had a duty to perform professional accounting and tax services in a proper, skillful and careful manner.
29. KPMG, Gary Powell, John Larson and Daniel Slattery breached their duty owed to Plaintiffs by failing to act with the care and skill of a reasonably competent accountant and tax consultant. Their breach of duty constitutes malpractice in the practice of accounting for which Plaintiffs seek actual damages.

30. Further, since such acts were committed intentionally, recklessly and without regard to the rights of the Perez brothers, Plaintiffs are entitled to recover punitive damages in an amount to be determined by the trier of fact.

D. Fourth Claim: Fraud against Quadra, KPMG, Gary Powell, John Larson and Daniel Slattery

31. Defendants made numerous intentional misrepresentations and omissions in providing investment, accounting and tax advice to Plaintiffs.

32. Such intentional misrepresentations and material omissions were made deliberately and with the intent to deceive Plaintiffs. Defendants knew that the representations concerning the investment strategy were false and material to Plaintiffs' decision to follow the investment strategy. Further, Defendants knew that Plaintiffs would rely and act upon the misrepresentations and material omissions.

33. As a result of Defendants' fraudulent representations and omissions, Plaintiffs have suffered actual damages. Further, since such acts were committed intentionally, recklessly and without regard to the rights of the Perez brothers, Plaintiffs are entitled to recover punitive damages in an amount to be determined by the trier of fact.

E. Negligent Misrepresentation against Quadra, KPMG, Gary Powell, John Larson and Daniel Slattery.

34. Defendants' negligently represented facts and omitted material representations in providing investment, accounting, legal and tax services to Plaintiffs, as set forth above. These representations, which the Perez brothers relied on, were false.

35. Plaintiffs suffered damages as a proximate result of Defendants' negligent misrepresentations and seek recovery for these damages. Further, since such acts were committed intentionally, recklessly and without regard to the rights of the Perez brothers, Plaintiffs are entitled to recover punitive damages in an amount to be determined by the trier of fact.

F. No claims under federal law.

36. Plaintiffs make no claims against Defendants under federal securities laws or other federal causes of action.

**VII.
DAMAGES**

37. As a result of Defendants' acts and omissions as set forth above, the Perez brothers have each sustained actual damages as et forth below.

- 1) Transaction costs and fees related to the investment strategy;
- 2) Potential penalties and interest on taxes paid as a result of disallowed capital losses;
- 3) Tax losses incurred by failing to proceed with other tax strategies that would have safely allowed the Perez brothers to reduce the tax liability that they would be required to pay;
- 4) Attorneys' fees and accounting fees expended in attempting to minimize the losses as a result of the investment strategy.

38. In addition, Plaintiffs are entitled to prejudgment interest, post judgment interest, punitive damages, treble damages, all costs associated with bringing this action, and reasonable attorneys' fees incurred in prosecuting this claim.

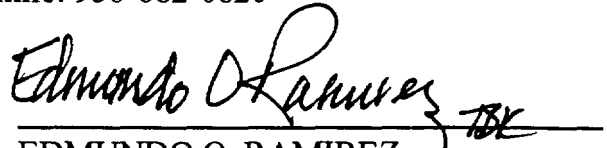
**VIII.
PRAYER**

WHEREFORE, Plaintiffs, Daniel A. Perez, David A. Perez, Ruben A. Perez, TValue Ventures, LP, Natalie Holdings LP, D&D Holdings, LP, and DanMar Holdings, LP respectfully pray that they be awarded the following relief:

1. Judgment against Defendants for a sum within the jurisdictional limits of the Court;
2. Prejudgment interest at the maximum amount provided by law;
3. Post-judgment interest at the maximum amount allowed by law;
4. Costs of suit; and
5. Attorneys' fees

Respectfully submitted,

ELLIS, KOENEKE & RAMIREZ, L.L.P.
1101 Chicago
McAllen, Texas 78501
Telephone: 956-682-2440
Facsimile: 956-682-0820

By: 
EDMUNDO O. RAMIREZ
SBN: 16501420

ATTORNEY FOR PLAINTIFFS

CAUSE NO. C-2593-03 +

RUBEN A. PEREZ, DANIEL A. PEREZ,
DAVID A. PEREZ, TVALUE VENTURES,
A TEXAS LIMITED PARTNERSHIP,
NATALIE HOLDINGS, A TEXAS
LIMITED PARTNERSHIP, D&D
HOLDINGS, A TEXAS LIMITED
PARTNERSHIP, AND DANMAR
HOLDINGS, A TEXAS LIMITED
PARTNERSHIP

VS.

KPMG LLP, DANIEL SLATTERY,
GARY POWELL, JOHN LARSON,
QUADRA ADVISORS L.L.C.,
QUADRA FINANCIAL GROUP L.P.

§ IN THE DISTRICT COURT

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IN THE DISTRICT COURT

FILED
AT 9:14 O'CLOCK 11 M

DEC 20 2002

PAULINE G. GONZALEZ, CLERK
DISTRICT COURT, HIDALGO COUNTY, TEXAS
By [Signature] Deputy

JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

APPLICATION AND DEMAND FOR JURY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, the Plaintiffs have deposited with the District Clerk of Hidalgo County, Texas, the jury fee of Thirty Dollars (\$30.00) and makes this, their application and demand for jury trial of the above-styled and numbered cause.

Respectfully submitted,

ELLIS, KOENEKE & RAMIREZ, L.L.P.
1101 Chicago
McAllen, Texas 78501
Telephone: 956-682-2440
Facsimile: 956-682-0820

By: Edmundo O. Ramirez
EDMUNDO O. RAMIREZ
SBN: 16501420

ATTORNEY FOR PLAINTIFFS

JAN-20-2003 14:53

ELLIS, KOENEKE, & RAMIREZ

1 956 682 0820 P.01/02

ELLIS, KOENEKE & RAMIREZ, L.L.P.

1101 Chicago
McAllen, Texas 78501-4822
(956) 682-2440
Fax: (956) 682-0820

FAX COVER SHEET

TO: FAX NUMBER TRANSMITTED TO:

MICHAEL W. PERRIN (713) 751-3290

FROM : EDMUNDO O. RAMIREZ

RE : PEREZ vs. KPMG

OUR FILE # : 02-188

DATE : January 20, 2003

DOCUMENTS	NUMBER OF PAGES*
SIGNED RULE 11	2 including cover page.

COMMENTS:

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2. ATTORNEY WORK PRODUCT; OR
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GR
Sender's Initials

TRACY R
DAVID O.

KING & SPALDING LLP

King & Spalding LLP
1100 Louisiana Street, Suite 4000
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Main: 713/751-3200
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Michael W. Perrin
Direct Dial: 713/751-3207
Direct Fax: 713/751-3290
mperrin@kslaw.com

January 17, 2003

Mr. Edmundo Ramirez
Ellis, Koeneke and Ramirez
1151 Chicago
McAllen, Texas 78501

Re: *Danmar Holdings, Ltd. and D&D Holdings, Ltd. v. United States of America*, Civil Action
Nos. M-01-293 and M-01-294 in the United States District Court for the Southern District
of Texas, McAllen Division

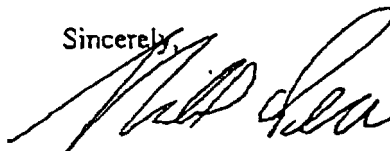
Dear Mr. Ramirez,

Thank you for taking the time to visit about this case. As I understand our conversation, you have agreed not to take a default against any the defendants, but you did not agree to the differences between the original stipulation from Ms. Maher and the later document.

Can you please confirm herein that you are agreeable to a reasonable extension of time, not to exceed 60 days from January 21, 2003, within which defendants can file responsive pleadings? If so, please sign this letter as a RULE 11 Agreement, and I will send a copy to Judge Aparicio's court so that we are all protected from default or dismissal.

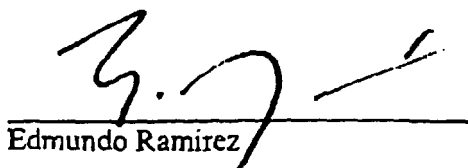
In the meantime, I will get a copy of Ms. Maher's original stipulation and a copy of the latest document. If necessary, we can discuss the differences. However, the 60 day extension you discussed with me should suffice.

Sincerely,



Michael W. Perrin
Partner

Agreed:
Ellis, Koeneke and Ramirez


Edmundo Ramirez

JAN-23-2003 10:36

O'NEILL, LYSAGHT & SUN
ATTORNEYS AT LAW310 399 7201
1 300 002 0020 F.02/02
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Heather E. Hersh
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Nicole M. Liem
Noah B. Salamon
Lisa C. Phelan

 Of Counsel
J. Joseph Connolly
Jeffrey M. Rawitz

January 17, 2003

Via Facsimile
 Edmundo O. Ramirez, Esq.
Ellis, Koeneke & Ramirez, L.L.P.
1101 Chicago
McAllen, TX 78501

 Re: Perez, et al. v. KPMG LLP, et al., Cause No. C-2593-02-A

Dear Mr. Ramirez:

In accordance with Rule 11 of the Texas Rules of Civil Procedure, this will confirm our telephone conversation of today during which you advised that you will agree to grant our clients Quadra Advisors, L.L.C. and Quadra Financial Group, L.P. a thirty (30) day extension of time within which to respond to plaintiffs' original Petition in the above-entitled matter. I believe our response is due January 21, 2003, and with the extension of time will now be due on February 20, 2003. This will also confirm that our clients are not waiving their right to challenge the Petition on any legal basis, including jurisdiction or venue, or to assert any affirmative defense.

Please sign this letter where indicated below and return it to me for filing with the Court. If you have any questions, please feel free to contact me. Thank you again for your professional courtesy and cooperation.

Very truly yours,

O'NEILL, LYSAGHT & SUN LLP


Yolanda Orozco

YO/mw


Edmundo O. Ramirez

AMSTON.WPP

Civil Docket

Court

Case No. C-2593-02-A
Hidalgo County

January 22nd, 2003
4:08pm

RUBEN A. PEREZ vs. KPMG LLP, ET. AL.

Filed : 12/20/2002

Status: Filed

Type: BREACH OF CONTRACT

Judge

EDWARD G. APARICIO

Court Reporter

Date		Volume	Page
	Events & Orders of the Court		
12/20/02	PLAINTIFF'S ORIGINAL PETITION		
12/20/02	Jury Trial Requested		
12/23/02	CITATION BY C/M ISSUED		
	TO JOHN LARSON, KPMG L.L.P., DANIEL SLATTERY, GARY		
	POWELL, AND SECRETARY OF STATE		
12/30/02	RETURN RECEIPT RECEIVED		
	GARY POWELL SERVED 12.27.02		
12/30/02	RETURN RECEIPT RECEIVED		
	KPMG L.L.P. SERVED 12.26.02		
12/30/02	RETURN RECEIPT RECEIVED		
	SECRETARY OF STATE OF TEXAS SERVED 12.27.02		
01/02/03	RETURN RECEIPT RECEIVED		
	DANIEL SLATTERY SERVED 12.28.02		

LIST OF ALL COUNSEL OF RECORD

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Attorneys for Quadra Advisors LLC
and Quadra Financial Group L.P.